

AMENDED IN ASSEMBLY APRIL 18, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1093**

**Introduced by Assembly Member Matthews**

February 22, 2005

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An act to amend Sections ~~204, 213, 226, 213~~ and 515.5 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1093, as amended, Matthews. Employment: wages.

~~Existing law provides that all wages, with specified exceptions, earned by any person in any employment are due and payable twice during each calendar month on predesignated days, and requires that all wages earned for labor in excess of the normal work period be paid no later than the payday for the next regular payday period. Existing law requires employers to furnish their employees, semimonthly or at the time of each payment of wages, with an itemized statement containing certain information regarding compensation and deductions from payments of wages, and provides that current or former employees of an employer have the right to inspect and copy these records and requires employers to comply with requests to inspect or copy these records within 21 calendar days from the date of the request, or be subject to penalties.~~

~~This bill would provide that nothing in those laws prohibits an employer that has expressed an employee's rate of pay as an annualized salary equivalent from paying that salary in equalized semimonthly installments, notwithstanding the varying number of days in each semimonthly period. This bill would authorize an employer to furnish the itemized statement in an electronic format, provided the electronic record contains all information required to be~~

~~in the statement, and provided the employer provides the employee with access to print the electronic record in a confidential setting during normal business hours. This bill would also provide that an employer shall be deemed to be in compliance with that law requiring the itemized written statement if the hours worked in excess of the normal work period are itemized on the statement that accompanies the pay for those hours.~~

Existing law prohibits any person from issuing in payment of wages due or to become due, as an advance on wages to be earned, any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless negotiable and payable on demand without discount at some established place of business in the state. Existing law provides that provision shall not prohibit an employer from depositing wages due or to become due or an advance on wages to be earned in an account on any bank, savings and loan association, or credit union of the employee's choice in this state, provided the employee has voluntarily authorized the deposit, and provides that if an employee is discharged or quits, the voluntary authorization for deposit shall be deemed terminated and existing law relating to payment of wages upon termination of employment shall apply.

~~This bill would delete from that provision the limitation that the bank, savings and loan association, or credit union of the employee's choice be in this state, and would also delete the requirement that the voluntary authorization for deposit be terminated if the employee is discharged or quits~~ *instead provide that the employer may deposit the wages or advance on wages in an account in any bank, savings and loan association, or credit union of the employee's choice that has a place of business in this state. This bill would additionally modify existing law to provide that if an employee is discharged or quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by depositing that sum into the account authorized by the employee, and would provide that existing law relating to the payment of wages upon termination or quitting of employment shall continue to apply.*

Existing law requires that an employee in the computer software field be exempt from the requirement that an overtime rate of compensation be paid if certain conditions are met, including a requirement the employee's hourly rate of pay is not less than \$41.00.

This bill would instead provide that requirement be that the employee's hourly rate of pay is not less than \$41.00 or the annualized

*full-time salary equivalent of that rate, provided that all the other requirements for exemption are met and that in each workweek the employee receives not less than \$41.00 per hour worked.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 204 of the Labor Code is amended to~~  
2     ~~read:~~  
3     ~~204. (a) All wages, other than those mentioned in Section~~  
4     ~~201, 202, 204.1, or 204. 2, earned by any person in any~~  
5     ~~employment are due and payable twice during each calendar~~  
6     ~~month, on days designated in advance by the employer as the~~  
7     ~~regular paydays. Labor performed between the 1st and 15th days,~~  
8     ~~inclusive, of any calendar month shall be paid for between the~~  
9     ~~16th and the 26th day of the month during which the labor was~~  
10    ~~performed, and labor performed between the 16th and the last~~  
11    ~~day, inclusive, of any calendar month, shall be paid for between~~  
12    ~~the 1st and 10th day of the following month. However, salaries of~~  
13    ~~executive, administrative, and professional employees of~~  
14    ~~employers covered by the Fair Labor Standards Act, as set forth~~  
15    ~~pursuant to Section 13(a)(1) of the Fair Labor Standards Act (29~~  
16    ~~U.S.C. Sec. 213(a)(1)), as amended through March 1, 1969, in~~  
17    ~~Part 541 of Title 29 of the Code of Federal Regulations, as that~~  
18    ~~part now reads or may be amended to read at any time hereafter,~~  
19    ~~may be paid once a month on or before the 26th day of the month~~  
20    ~~during which the labor was performed if the entire month's~~  
21    ~~salaries, including the unearned portion between the date of~~  
22    ~~payment and the last day of the month, are paid at that time.~~  
23    ~~(b) (1) Notwithstanding any other provision of this section, all~~  
24    ~~wages earned for labor in excess of the normal work period shall~~  
25    ~~be paid no later than the payday for the next regular payroll~~  
26    ~~period.~~  
27    ~~(2) An employer shall be deemed to be in compliance with the~~  
28    ~~requirements of subdivision (a) of Section 226 if the hours~~  
29    ~~worked in excess of the normal work period are itemized on the~~  
30    ~~statement accompanying the pay for those hours.~~  
31    ~~(c) Notwithstanding subdivision (a) or (b), when employees~~  
32    ~~are covered by a collective bargaining agreement that provides~~

1 different pay arrangements, those arrangements shall apply to the  
2 covered employees.

3 ~~(d) The requirements of this section shall be deemed satisfied~~  
4 ~~by the payment of wages for weekly, biweekly, or semimonthly~~  
5 ~~payroll if the wages are paid not more than seven calendar days~~  
6 ~~following the close of the payroll period.~~

7 ~~SEC. 2~~

8 *SECTION 1.* Section 213 of the Labor Code is amended to  
9 read:

10 213. Nothing contained in Section 212 shall:

11 (a) Prohibit an employer from guaranteeing the payment of  
12 bills incurred by an employee for the necessities of life or for the  
13 tools and implements used by the employee in the performance  
14 of his or her duties.

15 (b) Apply to counties, municipal corporations, quasi-municipal  
16 corporations, or school districts.

17 (c) Apply to students of nonprofit schools, colleges,  
18 universities, and other nonprofit educational institutions.

19 (d) Prohibit an employer from depositing wages due or to  
20 become due or an advance on wages to be earned in an account  
21 in any bank, savings and loan association, or credit union of the  
22 employee's choice *with a place of business located in this state*,  
23 provided that the employee has voluntarily authorized that  
24 deposit. *If an employer discharges an employee or the employee*  
25 *quits, the employer may pay the wages earned and unpaid at the*  
26 *time the employee is discharged or quits by making a deposit*  
27 *authorized pursuant to this subdivision, provided that the*  
28 *employer complies with the provisions of this article relating to*  
29 *the payment of wages upon termination or quitting of*  
30 *employment.*

31 ~~SEC. 3.~~ Section 226 of the Labor Code is amended to read:

32 ~~226. (a) (1) Every employer shall, semimonthly or at the~~  
33 ~~time of each payment of wages, furnish each of its employees,~~  
34 ~~either as a detachable part of the check, draft, or voucher paying~~  
35 ~~the employee's wages, or separately when wages are paid by~~  
36 ~~personal check or cash, an accurate itemized written statement~~  
37 ~~showing all of the following:~~

38 ~~(A) Gross wages earned.~~

39 ~~(B) Total hours worked by the employee, except for any~~  
40 ~~employee whose compensation is solely based on a salary and~~

1 who is exempt from payment of overtime under subdivision (a)  
2 of Section 515 or any applicable order of the Industrial Welfare  
3 Commission:

4 (C) The number of piece-rate units earned and any applicable  
5 piece rate if the employee is paid on a piece-rate basis.

6 (D) All deductions, provided that all deductions made on  
7 written orders of the employee may be aggregated and shown as  
8 one item:

9 (E) Net wages earned:

10 (F) The inclusive dates of the period for which the employee is  
11 paid:

12 (G) The name of the employee and his or her social security  
13 number, except that by January 1, 2008, only the last four digits  
14 of his or her social security number or an existing employee  
15 identification number other than a social security number may be  
16 shown on the check:

17 (H) The name and address of the legal entity that is the  
18 employer:

19 (I) All applicable hourly rates in effect during the pay period  
20 and the corresponding number of hours worked at each hourly  
21 rate by the employee:

22 (2) The deductions made from payments of wages shall be  
23 recorded in ink or other indelible form, properly dated, showing  
24 the month, day, and year, and a copy of the statement or a record  
25 of the deductions shall be kept on file by the employer for at least  
26 three years at the place of employment or at a central location  
27 within the State of California:

28 (b) An employer that is required by this code or any regulation  
29 adopted pursuant to this code to keep the information required by  
30 subdivision (a) shall afford every current and former employee  
31 the right to inspect or copy the records pertaining to the particular  
32 current or former employee, upon reasonable request to the  
33 employer. The employer may take reasonable steps to assure the  
34 identity of a current or former employee. If the employer  
35 provides copies of the records, the actual cost of reproduction  
36 may be charged to the current or former employee:

37 (c) An employer that receives a written or oral request to  
38 inspect or copy records pursuant to subdivision (b) pertaining to  
39 a current or former employee shall comply with the request as  
40 soon as practicable, but no later than 21 calendar days from the

1 ~~date of the request. A violation of this subdivision is an~~  
2 ~~infraction. Impossibility of performance, not caused by or a result~~  
3 ~~of a violation of law, shall be an affirmative defense for an~~  
4 ~~employer in any action alleging a violation of this subdivision.~~  
5 ~~An employer may designate the person to whom a request under~~  
6 ~~this subdivision will be made.~~

7 ~~(d) This section does not apply to any employer of any person~~  
8 ~~employed by the owner or occupant of a residential dwelling~~  
9 ~~whose duties are incidental to the ownership, maintenance, or use~~  
10 ~~of the dwelling, including the care and supervision of children, or~~  
11 ~~whose duties are personal and not in the course of the trade,~~  
12 ~~business, profession, or occupation of the owner or occupant.~~

13 ~~(e) An employee suffering injury as a result of a knowing and~~  
14 ~~intentional failure by an employer to comply with subdivision (a)~~  
15 ~~is entitled to recover the greater of all actual damages or fifty~~  
16 ~~dollars (\$50) for the initial pay period in which a violation occurs~~  
17 ~~and one hundred dollars (\$100) per employee for each violation~~  
18 ~~in a subsequent pay period, not exceeding an aggregate penalty~~  
19 ~~of four thousand dollars (\$4,000), and is entitled to an award of~~  
20 ~~costs and reasonable attorney's fees.~~

21 ~~(f) A failure by an employer to permit a current or former~~  
22 ~~employee to inspect or copy records within the time set forth in~~  
23 ~~subdivision (e) entitles the current or former employee or the~~  
24 ~~Labor Commissioner to recover a seven hundred fifty dollar~~  
25 ~~(\$750) penalty from the employer.~~

26 ~~(g) An employee may also bring an action for injunctive relief~~  
27 ~~to ensure compliance with this section, and is entitled to an~~  
28 ~~award of costs and reasonable attorney's fees.~~

29 ~~(h) This section does not apply to the state, to any city, county,~~  
30 ~~city and county, district, or to any other governmental entity,~~  
31 ~~except that if the state or a city, county, city and county, district,~~  
32 ~~or other governmental entity furnishes its employees with a~~  
33 ~~check, draft, or voucher paying the employee's wages, the state~~  
34 ~~or a city, county, city and county, district, or other governmental~~  
35 ~~entity shall, by January 1, 2008, use no more than the last four~~  
36 ~~digits of the employee's social security number or shall use an~~  
37 ~~existing employee identification number other than the social~~  
38 ~~security number on that check, draft, or voucher.~~

39 ~~(i) Nothing in this section or in Section 204 prohibits an~~  
40 ~~employer that has expressed an employee's rate of pay as an~~

1 ~~annualized salary equivalent from paying that salary in equalized~~  
2 ~~semimonthly installments, notwithstanding the varying number~~  
3 ~~of days in each semimonthly period.~~

4 ~~(j) Notwithstanding any other provision of law, an employer~~  
5 ~~may furnish the itemized statement required by subdivision (a) in~~  
6 ~~an electronic format, provided that the electronic record contains~~  
7 ~~all the information required by this section, and provided that the~~  
8 ~~employer, during normal business hours, provides the employee~~  
9 ~~with electronic access in a confidential setting to print the~~  
10 ~~itemized statement.~~

11 ~~SEC. 4~~

12 *SEC. 2.* Section 515.5 of the Labor Code is amended to read:

13 515.5. (a) Except as provided in subdivision (b), an  
14 employee in the computer software field shall be exempt from  
15 the requirement that an overtime rate of compensation be paid  
16 pursuant to Section 510 if all of the following apply:

17 (1) The employee is primarily engaged in work that is  
18 intellectual or creative and that requires the exercise of discretion  
19 and independent judgment.

20 (2) The employee is primarily engaged in duties that consist of  
21 one or more of the following:

22 (A) The application of systems analysis techniques and  
23 procedures, including consulting with users, to determine  
24 hardware, software, or system functional specifications.

25 (B) The design, development, documentation, analysis,  
26 creation, testing, or modification of computer systems or  
27 programs, including prototypes, based on and related to user or  
28 system design specifications.

29 (C) The documentation, testing, creation, or modification of  
30 computer programs related to the design of software or hardware  
31 for computer operating systems.

32 (3) The employee is highly skilled and is proficient in the  
33 theoretical and practical application of highly specialized  
34 information to computer systems analysis, programming, and  
35 software engineering. A job title shall not be determinative of the  
36 applicability of this exemption.

37 (4) The employee's hourly rate of pay is not less than  
38 forty-one dollars (\$41.00), or the annualized *full-time* salary  
39 equivalent of that rate, *provided that all other requirements of*  
40 *this section are met and that in each workweek the employee*

1 *receives not less than forty-one dollars (\$41.00) per hour*  
2 *worked.* The Division of Labor Statistics and Research shall  
3 adjust this pay rate on October 1 of each year to be effective on  
4 January 1 of the following year by an amount equal to the  
5 percentage increase in the California Consumer Price Index for  
6 Urban Wage Earners and Clerical Workers.

7 (b) The exemption provided in subdivision (a) does not apply  
8 to an employee if any of the following apply:

9 (1) The employee is a trainee or employee in an entry-level  
10 position who is learning to become proficient in the theoretical  
11 and practical application of highly specialized information to  
12 computer systems analysis, programming, and software  
13 engineering.

14 (2) The employee is in a computer-related occupation but has  
15 not attained the level of skill and expertise necessary to work  
16 independently and without close supervision.

17 (3) The employee is engaged in the operation of computers or  
18 in the manufacture, repair, or maintenance of computer hardware  
19 and related equipment.

20 (4) The employee is an engineer, drafter, machinist, or other  
21 professional whose work is highly dependent upon or facilitated  
22 by the use of computers and computer software programs and  
23 who is skilled in computer-aided design software, including  
24 CAD/CAM, but who is not in a computer systems analysis or  
25 programming occupation.

26 (5) The employee is a writer engaged in writing material,  
27 including box labels, product descriptions, documentation,  
28 promotional material, setup and installation instructions, and  
29 other similar written information, either for print or for onscreen  
30 media or who writes or provides content material intended to be  
31 read by customers, subscribers, or visitors to computer-related  
32 media such as the World Wide Web or CD-ROMs.

33 (6) The employee is engaged in any of the activities set forth  
34 in subdivision (a) for the purpose of creating imagery for effects  
35 used in the motion picture, television, or theatrical industry.